



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 11, 1998

Ms. Mary Keller
Senior Associate Commissioner
Legal and Compliance
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR98-0673

Dear Ms. Keller:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 113419.

The Texas Department of Insurance (the "department") received a request for the department's records on Nelson Morales, Rudy Mejia, and Premier Auto Insurance. You assert that the records at issue are protected from disclosure under section 552.103 of the Government Code.

To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You have shown that litigation is reasonably anticipated. Our review of the documents at issue shows these records are related to the anticipated litigation. Thus, the information at issue may be withheld from disclosure, except for the documents that have been seen by the opposing party to the anticipated litigation.¹ Once information has been obtained by all parties to the litigation, no section 552.103(a) interest generally exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982).

¹The applicability of section 552.103(a) also ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Because some of the documents have been seen by the opposing party in the anticipated litigation, we will address your argument that section 552.101 protects from disclosure financial information about individuals who are identified in the documents. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by constitutional or common-law privacy and under certain circumstances excepts from disclosure private facts about individuals. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld from public disclosure under a common-law right of privacy when the information is (1) highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1. Financial information about private individuals is the type of information that may be protected under common-law privacy. Open Records Decision No. 373 (1983) at 3. The information at issue must be de-identified to protect the individuals' common-law privacy interests. We have marked this information on the documents that have been seen by the opposing party.

We note also that driver's license numbers and vehicle identification numbers are included in the information that has been seen by the opposing party to the anticipated litigation. Section 552.130 of the Government Code provides:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of the state;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

The drivers' license numbers and motor vehicle identification numbers are confidential and access is only as provided under chapter 730 of the Transportation Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 113419

Enclosures: Submitted documents)

cc: Mr. Matt Goldberg
Investigative Producer
P.O. Box 2222
Houston, Texas 77252
(w/o enclosures)